

Message Text

CONFIDENTIAL

PAGE 01 KUWAIT 02129 01 OF 02 281004Z

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ACTION DLOS-07

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CIAE-00 DODE-00 PM-07 H-03 INR-10 L-03 NSAE-00 NSC-07

PA-04 RSC-01 PRS-01 SP-03 SS-20 USIA-15 CEQ-02 COA-02

COME-00 EB-11 EPA-04 NSF-04 SCI-06 FEA-02 ACDA-19

AEC-11 AGR-20 FMC-04 INT-08 JUSE-00 OMB-01 DRC-01

/215 W

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R 280920Z MAY 74

FM AMEMBASSY KUWAIT

TO SECSTATE WASHDC 9718

INFO AMEMBASSY ABIDJAN

AMEMBASSY ADDIS ABABA

AMEMBASSY DAR ES SALAAM

AMEMBASSY KINSHAYA

AMEMBASSY LAGOS

AMEMBASSY NAIROBI

AMEMBASSY NEW DELHI

USMISSION USUN NY

AMEMBASSY TEHRAN

C O N F I D E N T I A L SECTION 1 OF 2 KUWAIT 2129

USUN FOR STEVENSON; NEW DELHI PASS OXMAN FROM MOORE

EO 11652: GDS

TAGS: PBOR

SUBJ: LOS: CONSULTATIONS WITH GOVERNMENT OF KENYA

SUMMARY: JOHN NORTON MOORE AND AMBASSADOR CALLED ON FONMIN
MUNGAI AND LOS TEAM MET WITH GOK EXPERTS ON AFTERNOON OF
SAME DAY. CORDIAL DISCUSSIONS INDICATED KENYAN SUPPORT FOR
PROVISIONAL APPLICATION AND COMPULSORY DISPUTE SETTLEMENT AND
PRINCIPAL AREA OF DISAGREEMENT AS DEEP SEABEDS. END SUMMARY
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PAGE 02 KUWAIT 02129 01 OF 02 281004Z

1. ON MORNING OF MAY 21, JOHN NORTON MOORE, DEPUTY SPECIAL REP OF PRESIDENT FOR LOS CONFERENCE, AND AMBASSADOR ACCOMPANIED BY EMBOFF AND LOS TEAM MEMBER ESKIN CALLED ON FONMIN MUNGAI. DURING MEETING MOORE EXPRESSED APPRECIATION FOR CONSTRUCTIVE ROLE PLAYED BY KENYAN DEL IN LOS NEGOTIATIONS AND IMPORTANCE US ATTACHES TO TIMELY AND SUCCESSFUL CONFERENCE WHICH WILL ACCOMMODATE RESOURCE AND NAVIGATIONAL INTERESTS. MUNGAI EXPRESSED HOPE THAT KENYA COULD CONTRIBUTE TO FINDING ACCOMMODATION OF INTERESTS. HE STATED KENYA WOULD HAVE "STRONG DELEGATION" IN CARACAS. THERE WAS LOCAL PRESS AND TV COVERAGE OF MEETING, FIRST PORTION OF WHICH WAS FILMED AND REBROADCAST ON EVENING NEWS. MUNGAI ALSO RAISED INDIAN OCEAN ZONE OF PEACE, APPARENTLY, AS LATER CONFIRMED BY ADEDE, FOR POLITICAL EFFECT WITH PRESS PRESENT. ISSUE DROPPED AFTER BRIEF RESPONSE BY AMBASSADOR AND COMMENT BY MOORE THAT LOS AGENDA ALREADY CROWDED AND CONFERENCE NOT APPROPRIATE FORUM FOR ISSUE. (DETAILS IN SEPTTEL.

2. LOS TEAM MET WITH GOK OFFICIALS IN SESSION ON AFTERNOON OF MAY 21. THOSE PARTICIPATING ON KENYAN SIDE WERE DR. A.O. ADEDE, DIRECTOR, MOFA LEGAL OFFICE WHO CHAIRED MEETING); DONALD KINARU, MOFA LEGAL OFFICE; P.M. MUNENE, OFFICE OF THE PRESIDENT; MURUNGI, MINISTRY OF FINANCE AND PLANNING; WILLIAM OKOTH AND JOHN WALSH, MINES AND GEOLOGICAL DEPARTMENT; CAPTAIN A.A. RAFROUF, KENYAN NAVY; AND ADERO, MINISTRY OF POWER AND COMMUNICATIONS.

3. TERRITORIAL SEA AND STRAITS. THERE WAS DETAILED DISCUSSION OF THIS ISSUE WITH US (MOORE) STRESSING CRITICAL IMPORTANCE OF STRAITS ISSUE IN NEGOTIATIONS AND US TENTATIVE THINKING ABOUT POSSIBLE EXCEPTION FOR STRAITS SUCH AS PEMBA AND ZANZIBAR, WHERE THERE EXISTS EQUALLY SUITABLE ALTERNATIVE HIGH SEAS ROUTE AND WHERE STRAIT LIES BETWEEN COAST AND ISLAND UNDER SAME SOVEREIGNTY. ADEDE STATED THAT KENYA FAVORS UNIFORM TERRITORIAL SEA LIMIT AND CAN ACCEPT 12 MILES. KENYANS TOOK RELATIVELY HARD LINE ON STRAITS QUESTION DURING LARGE GROUP SESSION IN CONTRAST TO INDICATIONS WE HAVE RECEIVED FROM FRANK NJENGA AND PRIVATE COMMENTS LATER TO MOORE BY ADEDE. ADEDE SUGGESTED IN GROUP SESSION THAT NON-SUSPENDABLE INNOCENT PASSAGE WITH OBJECTIVELY DEFINED CRITERIA IS COMPROMISE BETWEEN

CONFIDENTIAL

PAGE 03 KUWAIT 02129 01 OF 02 281004Z

FREE TRANSIT AND INNOCENT PASSAGE CONCEPT, AND SAID THAT GOK STUDYING POSSIBLE REDEFINITIONS WHICH WOULD MEET U.S. "HALF-WAY". KINARU STATED KENYA MORE INCLINED TOWARD ELABORATION OF INNOCENT PASSAGE RATHER THAN FREE TRANSIT. RAFROUF (NAVY) REAFFIRMED THIS AND ADDED THAT MINISTRY OF DEFENSE CONSIDERS THAT COASTAL STATE SHOULD HAVE RIGHT TO REGULATE WARSHIPS IN STRAITS. MOORE POINTED OUT THAT NEITHER NOTIFICATION NOR CONSENT IS REQUIRED FOR WARSHIP TRANSIT EVEN UNDER INNOCENT

PASSAGE REGIME AND THAT THIS WOULD BE UNACCEPTABLE TO U.S. KENYANS ALSO RAISED OVERFLIGHT OF STRAITS, SUGGESTING THIS ISSUE SHOULD BE TREATED SEPARATELY AND THAT NEED FOR OVERFLIGHT NOT SAME AS FOR VESSELS. MOORE INDICATED THIS VIEW ANOMALOUS IN AN AGE WHEN PASSAGE OF AIRCRAFT OF GREAT IMPORTANCE. IN LATER PRIVATE CONVERSATION, ADEDE INFORMED MOORE THAT COASTAL STATE REGULATION OF WARSHIPS IN STRAITS NOT RPT NOT KENYAN POSITION AND THAT HE REALIZED KENYAN STRAITS STANCE SHOULD NOT BE QTE FIVE YEARS OUT OF DATE UNQTE AS IT MAY HAVE APPEARED. RAFROUF LATER TOLD DUGGER HE WAS ONLY GIVING HIS MINISTER'S VIEWS, NOT THAT OF GOK.

4. COASTAL RESOURCES: US TEAM PRESENTED U.S. VIEWS ON COASTAL STATE RESOURCE JURISDICTION, STRESSING EXCLUSIVE JURISDICTION OVER MINERAL RESOURCES IN BROAD AREA SUBJECT TO FIVE INTERNATIONAL STANDARDS, AND JURISDICTION OVER COASTAL STOCKS SUBJECT TO PRINCIPLES OF FULL UTILIZATION CONSERVATION AND COMPULSORY DISPUTE SETTLEMENT WITH SPECIAL PROVISION FOR TUNA, SALMON AND FULL RANGE OF COASTAL STOCKS. KENYANS INDICATED THEY COULD ACCEPT INTERNATIONAL STANDARDS IN ECONOMIC ZONE FOR PREVENTION OF MARINE POLLUTION AND WERE OPEN TO NEGOTIATION ON DETAILS. KENYANS SAID U.S. AND KENYA NOT TOO FAR APART ON FISHERIES BUT APPEARED TROUBLED BY FACT THAT US ARTICLES WOULD NOT GIVE EXCLUSIVE RIGHTS OVER FISH RESOURCES. KINARU STATED KENYA COULD AGREE TO FISHING RIGHTS FOR NEIGHBORING LAND-LOCKED STATES. MOORE AND BRITTIN POINTED OUT HOW KENYA WOULD BENEFIT BY PREFERENTIAL RATHER THAN EXCLUSIVE RIGHTS BECAUSE OF ACCESS THIS WOULD GIVE TO KENYA TO BETTER FISHERIES OFF OTHER COUNTRIES' COASTS. ADEDE CONCLUDED BY COMMENTING THAT FULL UTILIZATION PRINCIPLE IS WORTHY OF "SERIOUS CONSIDERATION" AND THAT GOK WOULD STUDY PROPOSAL.

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PAGE 01 KUWAIT 02129 02 OF 02 281019Z

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ACTION DLOS-07

INFO OCT-01 AF-05 NEA-09 IO-03 ISO-00 CG-00 DOTE-00

CIAE-00 DODE-00 PM-03 H-01 INR-10 L-03 NSAE-00 NSC-04

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COME-00 EB-05 EPA-01 NSF-04 SCI-01 FEA-01 ACDA-08

AEC-02 AGR-03 FMC-01 INT-01 JUSE-00 OMB-01 DRC-01

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FM AMEMBASSY KUWAIT
TO SECSTATE WASHDC 9719
INFO AMEMBASSY ABIDJAN
AMEMBASSY ADDIS ABABA
AMEMBASSY DAR ES SALAAM
AMEMBASSY KINSHAYA
AMEMBASSY LAGOS
AMEMBASSY NAIROBI
AMEMBASSY NEW DELHI
USMISSION USUN NY
AMEMBASSY TEHRAN

C O N F I D E N T I A L FINAL SECTION OF 2 KUWAIT 2129

5. MARINE POLLUTION. AFTER PRESENTATION U.S. POSITION ON SEABED AND VESSEL SOURCE POLLUTION THERE WAS LITTLE SUBSTANTIVE DISCUSSION BY KENYANS, ALTHOUGH ADEDE SUGGESTED THAT IN CONNECTION WITH DEALING WITH MARINE POLLUTION THERE COULD BE AN INCREASED ROLE FOR UNEP. ADEDE SEEMED TO AGREE WITH NEED TO AVOID COASTAL STATE STANDARD-SETTING IN ZONES FOR VESSEL SOURCE POLLUTION, TO ACCEPT IMCO AS INTERNATIONAL STANDARD-SETTING BODY FOR VESSEL SOURCE POLLUTION, AND TO ACCEPT US FLAG STATE-PORT STATE ENFORCEMENT.

6. DEEP SEABEDS. MOORE PRESENTED U.S. POSITION ON DEEP SEA-
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PAGE 02 KUWAIT 02129 02 OF 02 281019Z

BEDS REGIME AND MACHINERY AND STRESSED IMPORTANCE OF ISSUE TO US IN WAKE OF ENERGY CRISIS. ON SEABED EXPLOITATION, ADEDE SAID KENYA BELIEVES ENTERPRISE SHOULD BE RESPONSIBLE FOR EXPLOITING SEABED SUBJECT TO INTERNATIONAL REGULATION. MOORE INDICATED UNDER U.S. APPROACH GROUPS OF STATES COULD RECEIVE LICENSES TO EXPLOIT AND THAT IF ENTERPRISE COULD DIRECTLY EXPLOIT IT WOULD DRAIN FUNDS OTHERWISE AVAILABLE TO INTERNATIONAL COMMUNITY AS WELL AS PRESENT BUILT-IN CONFLICT OF INTEREST. DISCUSSION INDICATED THAT DEEP SEABEDS QUESTION IS AREA OF WIDEST DIFFERENCES IN U.S.- KENYAN POSITIONS. MOST EFFECTIVE ARGUMENT FOR U.S. POSITION SEEMED TO BE STRESS ON POLITICAL REALITY IN U.S. IN WAKE OF ENERGY CRISIS.

7. MARINE SCIENCE. MOORE EXPLAINED U.S. POSITION ON MARINE SCIENTIFIC RESEARCH. KENYANS INDICATED THAT COASTAL STATE SHOULD STIPULATE CONDITIONS FOR SCIENTIFIC RESEARCH IN ECONOMIC ZONE, AND INTERNATIONAL AUTHORITY SHOULD HAVE ROLE IN INTERNATIONAL AREA. ADEDE SAID PROBLEM OF DISTINGUISHING BETWEEN PURE

SCIENTIFIC RESEARCH AND COMMERCIAL RESEARCH MADE IT DIFFICULT TO KNOW WHAT CONDITIONS SHOULD BE APPLIED TO THE RESEARCH. WALSH (UK NATIONAL EMPLOYED BY GOK) STATED FLATLY THAT US PROPOSALS MET KENYA'S CONCERNS (ACTIONS OF OTHER GOK TEAM MEMBERS AFTER WALSH'S COMMENT SUGGEST THIS PROBABLY NOT CURRENT GOK POSITION). KINARU SPOKE TO DANGER OF COASTAL STATE BEING DECEIVED, NEED FOR CONSENT REGIME, AND REGULATION AUTHORITY FOR ISRA OVER RESEARCH IN AREA BEYOND NATIONAL JURISDICTION. MOORE MADE CLEAR US OPPOSITION TO REGULATION OF MARINE SCIENTIFIC RESEARCH IN AREA BEYOND NATIONAL JURISDICTION AND POINTED OUT HOW PROPOSAL MEETS NEEDS OF COASTAL STATE IN DIFFERENTIATING COMMERCIAL EXPLORATION FROM SCIENTIFIC RESEARCH BY REALITIES OF OBLIGATIONS IMPOSED.

8. DISPUTE SETTLEMENT. KENYANS INDICATED US AND KENYAN APPROACH TO DISPUTE SETTLEMENT SIMILAR. KENYANS SAID THEY COULD ACCEPT OCEAN TRIBUNAL BUT WITH SOME ROLE FOR ICJ. IN LATER PRIVATE CONVERSATION WITH MOORE, ADEDE SAID KENYANS AGREED WITH US APPROACH ON NEW OCEANS TRIBUNAL AND WOULD WORK WITHIN AFRICAN GROUP TO PROVIDE LEADERSHIP ON THIS ISSUE.

9. PROVISIONAL APPLICATION. KENYANS INDICATED SUPPORT FOR PROVISIONAL APPLICATION OF LOS TREATY BUT SAID IT WAS TOO EARLY

CONFIDENTIAL

PAGE 03 KUWAIT 02129 02 OF 02 281019Z

TO SAY WHICH ELEMENTS OF TREATY SHOULD ENTER INTO FORCE PROVISIONALLY. CLEAR IMPLICATION WAS THAT KENYA WOULD LIKE TO SEE BROAD RATHER THAN NARROW PROVISIONAL APPLICATION, INCLUDING FISHERIES AND DEEP SEABEDS.

10. RULES OF PROCEDURE. KENYANS STATED THEY AGREED WITH US DESIRE TO SEE TREATY NEGOTIATED WITH BROADEST POSSIBLE ACCEPTANCE AND UNDERSTOOD RATIONALE FOR US PROPOSED AMENDMENTS TO CONFERENCE RULES OF PROCEDURE, THOUGH THEY WOULD NOT NECESSARILY SUPPORT THEM.

11. COMMENT: LOS DISCUSSIONS WITH KENYANS CORDAIL AND PRODUCTIVE. IMPORTANCE OF ADHERENCE TO G.A. CONFERENCE SCHEDULE AND BASIC NATURE OF EMERGING "PACKAGE DEAL" STRESSED AND WELL-RECEIVED. KENYAN HARD LINE DURING WORKING SESSION ON STRAITS, PARTICULARLY AS CONCERNS WARSHIPS, SEEMS TO REFLECT VIEWS EITHER OF ONLY ONE MINISTER OR OF NEW LESS SOPHISTICATED PARTICIPANT IN KENYAN LOS PROCESS.

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